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APPENDIX

SUPREME COURT OF TEXAS

No. C-1069

BEN B. SHAW, Individually and as
Tax Assessor-Collector of Bexar County, Texas,
Appellant,

v.

PHILLIPS CRANE & RIGGING OF SAN ANTONIO, INC.,
and DELMAR PHILLIPS,
Appellees.

May 12, 1982

As Amended on Denial of Rehearing
July 21, 1982

WALLACE, Justice.

This is a direct appeal from a judgment of the district court which held Article 7266[1] unconstitutional and granted a permanent injunction against sale of personal property seized by the County Tax Assessor-Collector pursuant to that statute. We reverse the judgment of the trial court and dissolve the permanent injunction enjoining the sale of personal property seized for delinquent taxes.

Ben B. Shaw, Tax Assessor-Collector of Bexar County (Shaw) filed suit against Phillips Crane & Rigging of San Antonio, Inc. and Delmar Phillips (Phillips) for delinquent ad valorem taxes for the years 1972 through 1979. While the suit was pending, Shaw levied upon and seized certain personal property owned by Phillips. Shaw proposed to sell this personalty in 20 days at a public

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[1] All references are to Tex. Rev. Civ. Stat. Ann. unless otherwise indicated. This statute was repealed effective January 1, 1982.

auction as allowed by Article 7266. Phillips instituted suit to enjoin sale of the property contending that Article 7266 is unconstitutional. The trial court denied the injunction by interlocutory judgment. That judgment was appealed to the court of appeals which granted a temporary injunction to protect its jurisdiction pending a hearing on the merits. This Court upheld the court of civil appeals' action granting a temporary injunction, but specifically withheld approval of their holding that Article 7266 was unconstitutional. *State v. Querner Tuck Lines, Inc.*, Tex., 615 S.W.2d 176. On appeal of the merits, the Phillips case was consolidated with that of another taxpayer whose property had also been seized. *Querner Truck Lines, Inc. v. State*, Tex. Civ. App., 607 S.W.2d 1. The consolidated cases were heard on the merits by the court of appeals which held the statute unconstitutional stating, "[N]o efficient and adequate remedy exists under Texas statutes for a taxpayer to contest either before or after seizure . . . ." 610 S.W.2d 533, 544. On remand the district court rendered judgment that the statute was unconstitutional and granted a permanent injunction against sale of the property. Shaw brought this direct appeal. The sole issue before us is whether Article 7266 is unconstitutional for lack of due process safeguards.

Phillips contends that Article 7266 does not meet the due process requirements of the United States Supreme Court as set out in *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972); *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed 2d 349 (1969); and *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601, 95 S.Ct. 719, 42 L.Ed. 2d 751 (1975). The due process requirements for seizure of property enunciated by those cases are notice of and an opportunity to contest the seizure and sale. The exceptions to those requirements as set out in *Fuentes* are: (1) a necessity to secure an important governmental or general public interest; (2) a special need for prompt action; and (3) a strict control by the state over its monopoly of

legitimate force, i.e., seizure must be initiated by a governmental official who determines that it was necessary and justified in the particular instance.

We will first discuss whether sufficient notice and opportunity for a hearing is afforded by the taxation statutes which are found in Article 7145 through 7298.

A review of the above statutes reveals the following chronology of events which make up the process of rendition, assessment and a collection of ad valorem taxes. Each property owner is required to render his property, real and personal, with the County Tax Assessor not later than June 1, of each year. If the property owner fails or refuses to render his property it is the duty of the Assessor to render it for the owner. A list of all property in the county along with his evaluation is presented by the Assessor to the County Commissioner's Court, sitting as a Board of Equalization, not later than the first Monday in June, or as soon as practical thereafter. Upon approval of this property roll by the Board of Equalization, the tax roll is prepared by applying the authorized tax rate to the property roll. The tax roll is filed with the County Clerk and is available for inspection by the public. This filing with the County Clerk is required to be made no later than October 1. The taxes as indicated on the roll become due on January 1, of the following year. Any increase in the valuation of a taxpayer's property, above that for which he renders it, can only be made by the Board of Equalization after ten days notice of such meeting.

A taxpayer who renders his property as required by law is thus assured that it will be assessed at that value or he will have ten days notice to appear before the Board of Equalization to contest any increase. The taxpayer is thus on constructive notice no later than October 1, of each year, of the exact amount of his taxes due.

Only by following the above procedure is there a legal tax assessed against any taxpayer. Therefore, the stat-

utes provide due process to a taxpayer in the assessment of taxes against his property.

Phillips contends that its due process rights were violated in the seizure of its personal property for payment of the taxes.

If a taxpayer fails to pay his taxes by February 1,[2] of the year following assessment they become delinquent, and the Assessor-Collector may seize property of the taxpayer's sufficient to cover the outstanding taxes. The Collector must hold the property for ten days after seizure and then may sell the seiz[illegible]roperty at public auction. The tax statutes do not provide for a special hearing either before or after the seizure for the taxpayer to contest any possible mechanical or mathematical error made by the Assessor in calculating the amount shown on the delinquent tax rolls. It is this lack of notice and hearing which Phillips contends deprives a taxpayer of due process.

Shaw contends that a taxpayer is also afforded due process because the taxpayer can pay the tax under protest and then sue for recovery. Phillips contends that this is not available inasmuch as special consent of the Legislature is necessary to sue the State for such taxes. We reject Phillips' contention. As stated above, any increase in delinquent taxes shown by the Assessor due to a mathematical miscalculation would not be a legal tax and consent of the Legislature is not required in order to sue the County Tax Assessor-Collector for recovery of an illegal tax involuntarily paid under duress. *Crow v. City of Corpus Christi*, 146 Tex. 558, 209 S.W.2d 922 (1948); *Austin National Bank v. Sheppard*, 123 Tex. 272, 71 S.W.2d 242 (1934); *The Galveston Gas Company v. County of Galveston*, 54 Tex. 287 (1881); *see also, State v. Lain*, 162 Tex. 549, 349 S.W.2d 579 (1961).

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[2] Under the new Tax Code Ann. Sec. 31.02 (1981), taxes are now expressly delinquent as of February 1.

So long as there exists between the taxpayer and the Tax Assessor-Collector a legitimate controversy over the amount of the taxes the taxpayer may bring a suit for declaratory judgment to determine the accuracy of the tax computations and thus the legality of the taxes. Also, the taxpayer may bring a suit to enjoin the collection of the alleged illegal taxes pending a hearing on the legality of same. We hold these remedies meet the due process requirements in the seizure and sale of property as set out in *Fuentes*, *Sniadach*, and *North Georgia Finishing Co., Inc.*

A further reason for holding Article 7266 constitutional is that collection of ad valorem taxes by the County Tax Assessor-Collector falls within the exceptions enunciated by the United States Supreme Court in that the timely and efficient collection of ad valorem taxes secures an important governmental function; there is a special need for taxes to be paid when due in order that the County Commissioner's Court may meet the financial obligations of the county; and the seizure and sale of property to pay delinquent ad valorem taxes are under the control of a governmental officer, to-wit the County Tax Assessor-Collector, who makes the determination of the necessity and justification of seizure in a particular instance.

The judgment of the trial court is reversed and the injunction against sale of the property in question by the Bexar County Tax Assessor-Collector is dissolved.

SUPREME COURT OF TEXAS

No. C-1069

BEN B. SHAW, Individually and as
Tax Assessor-Collector of Bexar County, Texas,
Appellant,

vs.

PHILLIPS CRANE & RIGGING OF SAN ANTONIO, INC.
and DELMAR PHILLIPS,
Appellees.

DIRECT APPEAL

This cause was heard on direct appeal from the 224th District Court of Bexar County, Texas. The original record, briefs and arguments of Counsel were considered.

It is the opinion of the Court there was error in the judgment of the trial court which held Article 7266 unconstitutional and granted a permanent injunction against sale of personal property seized by the County Tax Assessor-Collector.

It is ordered that:

1) the judgment of the trial court is reversed and,
2) the permanent injunction enjoining the sale of personal property seized for delinquent taxes is dissolved.
3) Phillips Crane & Rigging of San Antonio, Inc. and Delmar Phillips shall pay the costs in this Court and the trial court.
4) Ben B. Shaw, individually and as Tax Assessor-Collector of Bexar County, Texas shall recover the costs he incurred in said courts.

A copy of this judgment with a copy of the opinion shall be certified to the District Court of Bexar County, Texas for observance.

(Opinion of the Court by Justice Wallace)

SUPREME COURT OF TEXAS

No. C-1069

BEN B. SHAW, Individually and as
Tax Assessor-Collector of Bexar County, Texas,
Appellant,

vs.

PHILLIPS CRANE & RIGGING OF SAN ANTONIO, INC.
and DELMAR PHILLIPS,
Appellees.

July 21, 1982

DIRECT APPEAL

Motion for rehearing on behalf of appellees Phillips Crane & Rigging of San Antonio, Inc., and Delmar Phillips, filed on May 27, 1982, in the above numbered and entitled cause, having been duly considered, it is ordered that the said motion be and hereby is overruled.

COURT OF CIVIL APPEALS OF TEXAS
SAN ANTONIO

Nos. 16605, 16606

QUERNER TRUCK LINES, INC.,
PHILLIPS CRANE & RIGGING OF SAN ANTONIO, INC.
and DELMAR PHILLIPS,
Appellants,

v.

THE STATE OF TEXAS, COUNTY OF BEXAR,
and BEN B. SHAW,
Appellees.

Nov. 19, 1980

Rehearing Denied Dec. 31, 1980

OPINION

MURRAY, Justice.

This is an interlocutory appeal taken from an order of the 37th District Court of Bexar County, Texas, denying the appellants' application for temporary injunction. The appellants sought to restrain a threatened tax sale of their property which had been levied upon and seized by Ben B. Shaw, Tax Assessor-Collector of Bexar County, to collect personal property taxes allegedly due Bexar County and other taxing authorities. Prior to the seizure the tax assessor-collector had instituted suits against appellants for the collection of these taxes and the suits are still pending. The amount of taxes claimed by the collector to be owed by Phillips is $12,920.42 for the years 1972 through 1979, and for Querner, $17,642.98 for the years 1960 through 1979.

The district court denied the temporary injunction and both appellants have perfected their appeal from such order to this court. After hearing arguments, this court

granted the request for temporary injunctions pending the determination of the merits of this appeal.

The tax assessor-collector has seized appellants' property by authority of Article 7266 of the Texas Revised Civil Statutes, which provides in part as follows:

> if any person shall fail or refuse to pay the taxes imposed upon him or his property by law, until the first day of January next succeeding the return of the assessment roll of the county to the Comptroller, the tax collector shall, by virtue of his tax roll, seize and levy upon and sell so much personal property belonging to such person as may be sufficient to pay his taxes, together with all costs accruing thereon.

Tex. Rev. Civ. Stat. Ann. art. 7266 (Vernon 1960). Appellants contend that this statute is unconstitutional because it operates to effect a deprivation of property without due process of law. We agree.

This suit is an action to restrain the tax collector from performing certain functions prescribed by an invalid legislative enactment. Whether appellants are entitled to the relief sought in the lower court rests solely on the validity of Article 7266. If it is valid, then it necessarily follows that the temporary injunction was rightfully denied by the trial court, for the official representatives of the state cannot be restrained from the performance of a duty placed upon them by valid statutory enactment.

Section 686 of 84 C.J.S. 1365 *Taxation*, states:

> Laws providing summary remedies for the collection of delinquent taxes are not open to constitutional objection because they dispense with some of the formalities of ordinary judicial procedure, or cut off technical defenses, or authorize the seizure of property first and a hearing afterward, provided the taxpayer is given an opportunity, at some stage of the proceedings and before his rights are finally cut off, to con-

> test the validity of the tax or his liability with respect to it; but a statute directly in conflict with a constitutional provision is void.

84 C.J.S. 1365 *Taxation* § 386 (1954).

States' statutes providing for summary remedies for the collection of taxes have been upheld as constitutional where they provide an opportunity either before or after the seizure for the taxpayer to contest the validity of the tax or his liability with respect to it. Some of these states are: Florida (F.S.A. § 199.341); New York (Tax Law § 1139); Louisiana (L.R.S. 47:2108); California (West Annotated Revenue and Taxation Code § 4512); Ohio (Ohio Revised Code § 2723.01 and § 5703.052); and many others. With the exceptions of the State of Texas, we have been unable to find any state statute which fails to provide a method for refund after seizure and sale.

Under Article 7266, the tax assessor-collector determines who is delinquent and collects the taxes by seizing their property and selling it. The taxpayer must then obtain legislative permission to sue the State before he may claim a refund. *Director of the Department of Agriculture and Environment v. Printing Industries Association of Texas*, 600 S.W.2d 264 (Tex. 1980); *Oxford v. Hill*, 558 S.W.2d 557 (Tex. Civ. App. —— Austin 1977, writ ref'd); *Hopper v. Midland County*, 500 S.W.2d 552 (Tex. Civ. App. —— El Paso 1973, writ ref'd n.r.e.). The Supreme Court of Texas in *Griffin v. Hawn*, 161 Tex. 442, 341 S.W.2d 151 (1960), stated, "Where the purpose of a proceeding against state officials to control action of the State or subject it to liability, the suit is against the State and cannot be maintained without the consent of the Legislature." 341 S.W.2d at 152. The right of the taxpayer to a refund of money seized by the tax collector under Article 7266 would depend on his ability to persuade the legislature to give permission to sue.

No efficient and adequate remedy exists under Texas statutes for a taxpayer to contest, either before or after the seizure, and Article 7266 is therefore unconstitutional. *See, Phillips v. Commissioner*, 283 U.S. 589, 51 S.Ct. 608, 75 L.Ed. 1289 (1931) (summary seizure by Internal Revenue Service).

The judgment of the trial court is reversed with instruction to enter a temporary injunction pending a trial on the merits.

SUPREME COURT OF TEXAS

No. C-126

STATE OF TEXAS, *et al.*,
Petitioners,

v.

QUERNER TRUCK LINES, INC., *et al.*,
Respondents.

March 18, 1981

PER CURIAM.

This case involves an interlocutory appeal taken from an order of the district court which denied an application for temporary injunction. The tax collector of Bexar County had seized and had threatened to sell certain personal property in order to collect personal property taxes the respondent taxpayers allegedly owed the County and other taxing authorities. The taxpayers sought to enjoin that impending sale. The district court denied the application for temporary injunction. The court of civil appeals reversed the judgment of the district court and remanded the cause to that court with instructions to render a temporary injunction pending trial on the merits. 610 S.W.2d 533.

We agree with the judgment of the court of civil appeals which preserves the subject matter of this cause pending trial on the merits. *Anderson v. Tall Timbers Corporation*, 162 Tex. 450, 347 S.W.2d 592 (1961). However, our refusal to grant this application for writ of error is not to be taken as approving the holding of the court of civil appeals that Article 7266, Texas Revised Civil Statutes Annotated, is unconstitutional. We reserve that question for future determination. The application for writ of error is refused, no reversible error.

COURT OF CIVIL APPEALS OF TEXAS
SAN ANTONIO

Nos. 16579, 16581

QUERNER TRUCK LINES, INC.,
Petitioner,
v.
STATE OF TEXAS,
Respondents.

PHILLIPS CRANE & RIGGING OF
SAN ANTONIO, INC., *et al.*,
Petitioners,
v.
BEN B. SHAW, Individually and as
Tax Assessor-Collector of Bexar County, Texas,
Respondents.

June 23, 1980

CADENA, Chief Justice.

Petitioners in these cases filed suits in the district court of Bexar County, Texas, seeking to enjoin the sale by respondent, Ben B. Shaw, of personal property of petitioners to satisfy a claim for delinquent taxes.

On June 3, 1980, Ben B. Shaw, in his capacity as tax collector, levied upon and took possession of personal property belonging to petitioner Querner Truck Lines, Inc. On the same day Shaw took similar action concerning personal property of petitioners, Phillips Crane & Rigging of San Antonio, Inc., and Delmar Phillips. Respondent Shaw acted in the exercise of the authority vested in him by the provisions of Tex. Rev. Civ. Stat. Ann. art. 7266 (Vernon 1960), which authorizes the summary seizure and sale of personal property on which delinquent taxes are owing.

Subsequently, Shaw posted notice of sale of the seized properties to be held on June 24, 1980.

Querner filed suit seeking declaratory relief and an injunction prohibiting Shaw from holding the proposed sale on June 24, 1980. A similar suit was filed by Phillips Crane & Rigging of San Antonio, Inc., and Delmar Phillips. The two cases were consolidated for the purpose of a hearing on the applications for injunctive relief, and on June 19, 1980, the trial court entered orders denying the applications of all petitioners for temporary injunction. Petitioners have timely filed appeal bonds.

By the proceedings filed in this court petitioners seek an order enjoining the sale of their property, scheduled to take place on June 24, 1980, pending determination on the merits of their appeals from the order of the trial court denying their prayers for temporary injunctions.

Respondents admit that if the sale takes place on June 24, 1980, the appeals from the orders denying temporary injunctive relief will become moot and would require a dismissal of such appeals. This means that unless the sale is prevented our jurisdiction to hear the appeals will be destroyed, since any opinion we might deliver concerning the propriety of the denial of such relief would be meaningless.

Under Tex. Rev. Civ. Stat. Ann. art. 1823 (Vernon 1964), this court may issue all writs necessary to protect its jurisdiction. The power to take such action in response to an original proceeding filed in this court cannot be doubted. *See Riverdrive Mall, Inc. v. Larwin Mortgage Investors*, 515 S.W.2d 2 (Tex. Civ. App. — San Antonio 1974, writ ref'd n.r.e), where this court enjoined a sale under a deed of trust in order to protect our jurisdiction and preserve the subject matter of the appeal so that whatever decree we might enter in connection with the appeal from the trial court's refusal to temporarily enjoin the sale might be effective.

In the brief filed in opposition to petitioners' applications for injunctive relief from this court, respondents assert that the trial court correctly refused to grant injunctive relief because the grounds urged by petitioners in the trial court as supporting such relief are without merit. Such proposition requires that we, at this time, decide the merits of the appeal. We decline to do so in this case without deciding whether such consideration of the merits of an appeal would be proper in any case.

Respondent, Ben B. Shaw, is enjoined from conducting the sale of the personal property of petitioners levied upon and seized by Ben B. Shaw on June 3, 1980, pending final determination by this court of the propriety of the action of the trial court in denying the temporary injunctions sought by petitioners; provided that petitioners filed with our Clerk, no later than 10:00 a.m. June 24, 1980, bonds meeting the following requirements:

The bond to be filed by petitioner, Querner Truck Lines, Inc., shall be in the amount of $18,000.00, with good and sufficient sureties, approved by the District Clerk of Bexar County, Texas, conditioned that Querner Truck Lines, Inc., will pay to the State of Texas, Bexar County and Ben B. Shaw all damages to such respondents in the event this court shall determine that the temporary injunction was properly denied by the trial court.

The bond to be filed by petitioners, Phillips Crane & Rigging of San Antonio, Inc., and Delmar Phillips, shall be in the amount of $13,500.00, with good and sufficient sureties, to be approved by the District Clerk of Bexar County, Texas, conditioned that Phillips Crane & Rigging of San Antonio, Inc., shall pay to respondent, Ben B. Shaw, Tax Collector-Assessor of Bexar County, Texas, all damages in the event this court shall finally determine that the temporary injunction sought by these two petitioners was properly denied by the trial court.

IN THE DISTRICT COURT
224TH JUDICIAL DISTRICT
BEXAR COUNTY, TEXAS

No. 80-CI-8970-A

PHILLIPS CRANE & RIGGING OF SAN ANTONIO, INC., and DELMAR PHILLIPS, formerly doing business as PHILLIPS ERECTION COMPANY

vs.

BEN B. SHAW, Individually and as Tax Assessor-Collector of Bexar County, Texas

JUDGMENT GRANTING PERMANENT INJUNCTION

BE IT REMEMBERED that on this 19th day of November, 1981, came on to be heard in the above styled and numbered cause for trial on the merits of the first and second counts of the Plaintiffs' Petition, relating to the actions for declaratory and injunctive relief. The said causes of action were severed from the third and fourth counts contained in the Plaintiffs' Petition by an Order previously entered by this Court. The parties appeared by and through their attorneys of record and announced ready for trial. The parties further announced that they had reached a stipulation as to the facts of the case, and the parties submitted a written stipulation which was duly certified by the Court and considered pursuant to Rule 263, Texas Rules of Civil Procedure.

After considering the agreed facts, and hearing the argument of counsel, the Court is of the opinion that Article 7266 of the Texas Revised Civil Statutes, is unconstitutional, and that the injunctive relief requested by the Plaintiffs should be granted. Accordingly, it is

ORDERED, ADJUDGED, DECREED and DECLARED, that Article 7266 of the Texas Revised Civil Statutes is unconstitutional; and it is further

ORDERED, ADJUDGED and DECREED that the Temporary Injunction herein granted be made perpetual, and that the Defendants, BEN B. SHAW, his agents, employees, and attorneys, and all those in active concert or participation with him, and his successors in office as Tax Assessor-Collector of Bexar County, Texas, be and hereby are permanently restrained and enjoined from any sale of the corporate Plaintiff's property for the collection of any taxes alleged to be due for the years 1972 to 1979, assessed in the name of either Plaintiff.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the principal and sureties on Plaintiffs' bond for Temporary Injunction herein should be and are hereby relieved and discharged from further liability on such bond upon this judgment becoming final.

SIGNED AND ORDERED ENTERED this 19th day of November, 1981.

/s/ James C. Onion
Judge presiding

IN THE DISTRICT COURT
224TH JUDICIAL DISTRICT
BEXAR COUNTY, TEXAS

No. 80-CI-8970

PHILLIPS CRANE & RIGGING OF SAN ANTONIO, INC., and DELMAR PHILLIPS, formerly doing business as PHILLIPS ERECTION COMPANY

vs.

BEN B. SHAW, Individually and as Tax Assessor-Collector of Bexar County, Texas

STIPULATION OF COUNSEL

It is agreed and stipulated by and between counsel for Plaintiffs and counsel for Defendants as follows:

1. Phillips Crane & Rigging of San Antonio, Inc., is a corporation duly organized and existing under the laws of the State of Texas, with its principal place of business in Bexar County, Texas.

2. Delmar Phillips is an individual and formerly did business in Bexar County, Texas, as Phillips Erection Company.

3. Ben B. Shaw is the duly elected, qualified and acting Tax Assessor-Collector of Bexar County, Texas.

4. Because the validity of state statutes is involved in this preceding, service of process was had upon Mark White, Attorney General of the State of Texas, but no answer on behalf of the Attorney General or the State of Texas has been had in this cause.

5. On June 3, 1980, Ben B. Shaw levied upon, seized and took into possession certain property belonging to the corporate plaintiff.

6. True and correct copies of the Notices of Levy signed by the defendant are attached to the Plaintiff's petition as Exhibit A.

7. On June 4, 1980, the defendant posted a Notice of Tax Sale proclaiming that the assets of the corporate plaintiff which had been levied upon, seized and taken into possession by the defendant would be sold on June 24, 1980. A true and correct copy of this Notice of Tax Sale is attached to the Plaintiff's petition as Exhibit B.

8. According to the Notices of Levy, such levy was made for the allegedly delinquent taxes claim by the defendant to be owed for the years 1972 through 1979 and assessed under the name of the corporate plaintiff or the individual plaintiff.

9. On February 19, 1976, a suit was filed by the City of San Antonio, Texas, in the 166th District Court of Bexar County, Texas, Docket No. 76-TA2-42, against the corporate plaintiff alleging that certain personal property taxes were due and owing to the City of San Antonio and seeking to collect these allegedly due and delinquent taxes. Thereafter, the State of Texas and the County of Bexar intervened in the said suit, seeking to collect personal property taxes for the years 1972 forward.

10. This suit described in the previous paragraph is still pending, and was pending at the time of the defendant's seizure of property belonging to the corporate plaintiff.

11. The taxes being sought by the Notices of Levy and the taxes upon which there is the above-described tax suit are the same taxes, and the defendant is seeking identical results in both seizure proceedings and the law suit.

12. The fair market value of the personal property levied upon, seized and taken into possession by the defendant is far in excess of the taxes claimed to be due

and owing by the defendant as taxes, penalty and interest.

13. The testimony and exhibits presented and adduced at the hearing upon Plaintiff's Application for Temporary Injunction which was conducted on the 17th day of June 1980 before the Honorable Richard J. Woods shall be admitted into evidence upon the trial on the merits in the above entitled and numbered cause, and that such testimony which was subsequently reduced to writing by Joanne G. Price, Official Court Reporter, shall be and constitutes the Statement of Facts upon the trial of the merits, subject to the following additional stipulations.

14. It is further agreed and stipulated by and between the counsel for Plaintiff's and counsel for Defendants that unless enjoined from so doing, Defendant, Ben B. Shaw, Tax Assessor-Collector of Bexar County, Texas, will proceed with the seizure and sale of those items of personal property described in Plaintiff's Original Petition, which items have a fair market value substantially in excess of the amount claimed by Defendants to be due and owing as taxes, penalty, and interest.

15. The plaintiffs and the defendants disagree as to whether Article 7266, Texas Revised Civil Statutes is unconstitutional.

16. It is further agreed that, if Article 7266 is unconstitutional, the plaintiffs will suffer immediate irreparable loss, injury or harm for which there is no adequate remedy at law if the defendant is not permanently enjoined from proceeding with a tax sale.

17. This case shall be submitted to the court upon this agreed stipulation of facts, upon which judgment should be rendered, and this statement signed and certified by the court to be correct and the judgment rendered by the court thereon shall constitute the record of this cause.

Executed this 13th day of November, 1981.

(Signatures of counsel omitted in printing)

CERTIFICATION OF COURT

ON THIS DATE the court considered the above stipulation of counsel which has been filed with the clerk and after considering the same, finds that the stipulations should be approved in all things and that this case should be determined as an agreed statement of facts pursuant to Rule 263, Texas Rules of Civil Procedure.

Signed this 19th day of November, 1981.

/s/ James C. Onion
Judge Presiding

Filed: July 26, 1982

IN THE SUPREME COURT OF TEXAS

No. C-1069

BEN B. SHAW, Individually and as
Tax Assessor-Collector of Bexar County, Texas,
Appellant,

vs.

PHILLIPS CRANE & RIGGING OF SAN ANTONIO, INC.,
and DELMAR PHILLIPS, formerly doing business as
PHILLIPS ERECTION COMPANY,
Appellees.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Phillips Crane & Rigging of San Antonio, Inc., and Delmar Phillips, formerly doing business as Phillips Erection Company, the appellees in the above styled and numbered cause, hereby appeal to the Supreme Court of the United States from the judgment of the Supreme Court of Texas which became final on July 21, 1982, holding that Article 7266, Texas Revised Civil Statutes, is not unconstitutionally repugnant to the Fourteenth Amendment to the Constitution of the United States, and reversing the trial court's judgment of unconstitutionality and vacating the permanent injunction entered in favor of Phillips.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

Respectfully submitted,

/s/ Gary Pinnell
GARY PINNELL

(Proof of Service omitted in printing)

Filed: Oct. 15, 1982

IN THE SUPREME COURT OF TEXAS

No. C-1069

BEN B. SHAW, Individually and as
Tax Assessor-Collector of Bexar County, Texas,
Appellant,

VS.

PHILLIPS CRANE & RIGGING OF SAN ANTONIO, INC.,
and DELMAR PHILLIPS, formerly doing business as
PHILLIPS ERECTION COMPANY,
Appellees.

SUPPLEMENTAL
NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Phillips Crane & Rigging of San Antonio, Inc., and Delmar Phillips, formerly doing business as Phillips Erection Company, the appellees in the above styled and numbered cause, hereby appeal to the Supreme Court of the United States from the judgment of the Supreme Court of Texas which became final on July 21, 1982, holding that Article 7266, Texas Revised Civil Statutes, is not unconstitutionally repugnant to the Fourteenth Amendment to the Constitution of the United States, and which reversed the trial court's judgment of unconstitutionality and vacated the permanent injunction entered in favor of Phillips.

Notice is further given that, because subsequent to the judgment of the Supreme Court of Texas, Ben B. Shaw resigned as Tax Assessor-Collector of Bexar County, Texas, Rudy Garzia, his successor in office, is being joined as an additional party pursuant to Rule 40.3 of the Rules of the Supreme Court of the United States.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

Respectfully submitted,

/s/ Gary Pinnell
GARY PINNELL

(Proof of Service omitted in printing)